

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 885

By: Paxton

AS INTRODUCED

An Act relating to insurance; stating purpose and limitations of act; applying act to all state domiciled insurers; defining terms; requiring submission to certain person of Corporate Governance Annual Disclosure; specifying content of disclosure documents; requiring exempt insurers to submit disclosure at certain request; establishing methods of completing disclosure; establishing method of review of disclosure; providing for exemption of certain documents in case of duplication; granting insurers authority over response to certain inquiry; authorizing Insurance Commissioner to request additional information for disclosure document; specifying procedure for preparing disclosure; classifying disclosure documents as confidential and privileged; exempting documents from Open Records Act and certain legal procedures; authorizing Commissioner to use documents in certain legal actions; requiring consent of insurer to release documents in certain situations; exempting certain persons from certain legal procedures; authorizing Commissioner to send and receive certain disclosure documents; declaring certain sharing of information not delegation of rulemaking authority; prohibiting certain waiver; authorizing Commissioner to hire certain third-party consultants; establishing provisions related to hiring consultants; requiring certain written agreement with consultants; establishing terms of written agreement; establishing fees and penalties for violation of act; authorizing Commissioner to promulgate rules; providing for codification; and providing an effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1541 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 A. The purpose of this act is to:

6 1. Provide the Insurance Commissioner a summary of an insurer
7 or insurance group's corporate governance structure, policies and
8 practices to permit the Commissioner to gain and maintain an
9 understanding of the insurer's corporate governance framework;

10 2. Outline the requirements for completing a corporate
11 governance annual disclosure with the Insurance Commissioner; and

12 3. Provide for the confidential treatment of the corporate
13 governance annual disclosure and related information that will
14 contain confidential and sensitive information related to an insurer
15 or insurance group's internal operations and proprietary and trade
16 secret information which, if made public, could potentially cause
17 the insurer or insurance group competitive harm or disadvantage.

18 B. Nothing in this act shall be construed to prescribe or
19 impose corporate governance standards and internal procedures beyond
20 that which is required under applicable state corporate law.

21 Notwithstanding the foregoing, nothing in this act shall be
22 construed to limit the Commissioner's authority, or the rights or
23 obligations of third parties, under Sections 309.1 through 309.7 of
24 Title 36 of the Oklahoma Statutes.

1 C. The requirements of this act shall apply to all insurers
2 domiciled in this state.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1542 of Title 36, unless there
5 is created a duplication in numbering reads as follows:

6 A. "Commissioner" means the Insurance Commissioner.

7 B. "Corporate Governance Annual Disclosure (CGAD)" means a
8 confidential report filed by the insurer or insurance group made in
9 accordance with the requirements of this act.

10 C. "Insurance group" means those insurers and affiliates
11 included within an insurance holding company system, as defined in
12 Section 1651 et seq. of Title 36 of the Oklahoma Statutes.

13 D. "Insurer" shall have the same meaning as set forth in
14 Section 103 of Title 36 of the Oklahoma Statutes, except it shall
15 not include agencies, authorities or instrumentalities of the United
16 States, its possessions and territories, the Commonwealth of Puerto
17 Rico, the District of Columbia or a state or political subdivision
18 of a state.

19 E. "Own Risk and Solvency Assessment (ORSA) Summary Report"
20 means the report filed in accordance with Section 3301 et seq. of
21 Title 36 of the Oklahoma Statutes.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1543 of Title 36, unless there
24 is created a duplication in numbering reads as follows:

1 A. An insurer, or the insurance group of which the insurer is a
2 member, shall, no later than June 1 of each calendar year, submit to
3 the Insurance Commissioner of this state a Corporate Governance
4 Annual Disclosure (CGAD) that contains the information described in
5 Section 4 of this act. Notwithstanding any request from the
6 Commissioner made pursuant to subsection C of this section, if the
7 insurer is a member of an insurance group, the insurer shall submit,
8 in addition to the report required to be submitted to the Insurance
9 Commissioner of this state, the report required by this section to
10 the Commissioner of the lead state for the insurance group, in
11 accordance with the laws of the lead state, as determined by the
12 procedures outlined in the most recent Financial Analysis Handbook
13 adopted by the National Association of Insurance Commissioners
14 (NAIC) .

15 B. The CGAD shall include a signature of the insurer or chief
16 executive officer or corporate secretary of the insurance group
17 attesting that, to the best of that individual's belief and
18 knowledge, the insurer has implemented the corporate governance
19 practices and a copy of the disclosure has been provided to the
20 board of directors of the insurer or the appropriate committee
21 thereof.

22 C. An insurer not required to submit a CGAD under this section
23 shall do so upon the request of the Commissioner.
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1 D. For purposes of completing the CGAD, the insurer or
2 insurance group may provide information regarding corporate
3 governance at the ultimate controlling parent level, an intermediate
4 holding company level and/or the individual legal entity level,
5 depending upon how the insurer or insurance group has structured its
6 system of corporate governance. The insurer or insurance group is
7 encouraged to make the CGAD disclosures at the level at which the
8 risk appetite of the insurer or insurance group is determined, or at
9 which the earnings, capital, liquidity, operations and reputation of
10 the insurer are overseen collectively and at which the supervision
11 of those factors are coordinated and exercised, or the level at
12 which legal liability for failure of general corporate governance
13 duties would be placed. If the insurer or insurance group
14 determines the level of reporting based on these criteria, it shall
15 indicate which of the three (3) criteria was used to determine the
16 level of reporting and explain any subsequent changes in level of
17 reporting.

18 E. The review of the CGAD and any additional requests for
19 information shall be made through the lead state as determined by
20 the procedures within the most recent Financial Analysis Handbook
21 referenced in subsection A of this section.

22 F. Insurers providing information substantially similar to the
23 information required by this act in other documents provided to the
24 Commissioner, including proxy statements filed in conjunction with
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1 Form B requirements, or other state or federal filings provided to
2 the Insurance Department shall not be required to duplicate that
3 information in the CGAD, but shall only be required to cross
4 reference the document in which the information is included.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1544 of Title 36, unless there
7 is created a duplication in numbering reads as follows:

8 A. The insurer or insurance group shall have discretion over
9 the responses to the CGAD inquiries, provided the CGAD shall contain
10 the material information necessary to permit the Insurance
11 Commissioner to gain an understanding of the corporate governance
12 structure, policies and practices of the insurer or insurance
13 company. The Commissioner may request additional information that
14 he or she deems material and necessary to provide the Commissioner
15 with a clear understanding of the corporate governance policies, the
16 reporting or information system or controls implementing those
17 policies.

18 B. Notwithstanding subsection A of this section, the CGAD shall
19 be prepared consistent with any regulation created for purposes of
20 this act. Documentation and supporting information shall be
21 maintained and made available upon examination or upon request of
22 the Commissioner.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1545 of Title 36, unless there
3 is created a duplication in numbering reads as follows:

4 A. Documents, materials or other information including the
5 CGAD, in the possession or control of the Department of Insurance
6 that are obtained by, created by or disclosed to the Insurance
7 Commissioner or any other person under this act, are recognized by
8 this state as being proprietary and to contain trade secrets. All
9 such documents, materials or other information shall be confidential
10 by law and privileged, shall not be subject to the Oklahoma Open
11 Records Act, shall not be subject to subpoena, and shall not be
12 subject to discovery or admissible in evidence in any private civil
13 action. However, the Commissioner is authorized to use the
14 documents, materials or other information in the furtherance of any
15 regulatory or legal action brought as a part of the official duties
16 of the Commissioner. The Commissioner shall not otherwise make the
17 documents, materials or other information public without the prior
18 written consent of the insurer. Nothing in this section shall be
19 construed to require written consent of the insurer before the
20 Commissioner may share or receive confidential documents, materials
21 or other CGAD-related information pursuant to subsection C of this
22 section to assist in the performance of the regular duties of the
23 Commissioner.

1 B. Neither the Commissioner nor any person who received
2 documents, materials or other CGAD-related information, through
3 examination or otherwise, while acting under the authority of the
4 Commissioner, or with whom such documents, materials or other
5 information are shared pursuant to this act shall be permitted or
6 required to testify in any private civil action concerning any
7 confidential documents, materials or information subject to
8 subsection A of this section.

9 C. In order to assist in the performance of the regulatory
10 duties of the Commissioner, he or she:

11 1. May, upon request, share documents, materials or other CGAD-
12 related information including the confidential and privileged
13 documents, materials or information subject to subsection A of this
14 section, including proprietary and trade secret documents and
15 materials with other state, federal and international financial
16 regulatory agencies, including members of any supervisory college as
17 defined in the Section 3301 et seq. of Title 36 of the Oklahoma
18 Statutes, with the NAIC and with third party consultants pursuant to
19 Section 6 of this act, provided, the recipient agrees in writing to
20 maintain the confidentiality and privileged status of the CGAD-
21 related documents, material or other information and has verified in
22 writing the legal authority to maintain confidentiality; and

23 2. May receive documents, materials or other CGAD-related
24 information, including otherwise confidential and privileged
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1 documents, materials or information, including proprietary and
2 trade-secret information or documents, from regulatory officials of
3 other state, federal and international financial regulatory
4 agencies, including members of any supervisory college as defined in
5 the Section 3301 et seq. of Title 36 of the Oklahoma Statutes, and
6 from the NAIC, and shall maintain as confidential or privileged any
7 documents, materials or information received with notice or the
8 understanding that it is confidential or privileged under the laws
9 of the jurisdiction that is the source of the document, material or
10 information.

11 D. The sharing of information and documents by the Commissioner
12 pursuant to this act shall not constitute a delegation of
13 rulemaking, and the Commissioner is solely responsible for the
14 administration, execution and enforcement of the provisions of this
15 act.

16 E. No waiver of any applicable privilege or claim of
17 confidentiality in the documents, proprietary and trade-secret
18 materials or other CGAD-related information shall occur as a result
19 of disclosure of such CGAD-related information or documents to the
20 Commissioner under this section or as a result of sharing as
21 authorized in this act.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1546 of Title 36, unless there
24 is created a duplication in numbering reads as follows:

1 A. The Insurance Commissioner may retain, at the expense of the
2 insurer, third-party consultants, including attorneys, actuaries,
3 accountants and other experts not otherwise a part of the staff of
4 the Commissioner as may be reasonably necessary to assist the
5 Commissioner in reviewing the CGAD and related information or the
6 insurer's compliance with this act.

7 B. Any persons retained under subsection A of this section
8 shall be under the direction and control of the Commissioner and
9 shall act in a purely advisory capacity.

10 C. The NAIC and third-party consultants shall be subject to the
11 same confidentiality standards and requirements as the Commissioner.

12 D. As part of the retention process, a third-party consultant
13 shall verify to the Commissioner, with notice to the insurer, that
14 it is free of a conflict of interest and that it has internal
15 procedures in place to monitor compliance with a conflict and to
16 comply with the confidentiality standards and requirements of this
17 act.

18 E. A written agreement with the NAIC and/or a third-party
19 consultant governing sharing and use of information provided
20 pursuant to this act shall contain the following provisions and
21 expressly require the written consent of the insurer prior to making
22 public information provided under this act:

1 1. Specific procedures and protocols for maintaining the
2 confidentiality and security of CGAD-related information shared with
3 the NAIC or a third-party consultant pursuant to this act;

4 2. Procedures and protocols for sharing by the NAIC only with
5 other state regulators from states in which the insurance group has
6 domiciled insurers. The agreement shall provide that the recipient
7 agrees in writing to maintain the confidentiality and privileged
8 status of the CGAD-related documents, materials or other information
9 and has verified in writing the legal authority to maintain
10 confidentiality;

11 3. A provision specifying that ownership of the CGAD-related
12 information shared with the NAIC or a third-party consultant remains
13 with the Department of Insurance and the NAIC's or third-party
14 consultant's use of the information is subject to the direction of
15 the Commissioner;

16 4. A provision that prohibits the NAIC or a third-party
17 consultant from storing the information shared pursuant to this act
18 in a permanent database after the underlying analysis is completed;

19 5. A provision requiring the NAIC or third-party consultant to
20 provide prompt notice to the Commissioner and to the insurer or
21 insurance group regarding any subpoena, request for disclosure or
22 request for production of the insurer's CGAD-related information;
23 and
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1 6. A requirement that the NAIC or a third-party consultant to
2 consent to intervention by an insurer in any judicial or
3 administrative action in which the NAIC or a third-party consultant
4 may be required to disclose confidential information about the
5 insurer shared with the NAIC or a third-party consultant pursuant to
6 this act.

7 SECTION 7. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1547 of Title 36, unless there
9 is created a duplication in numbering reads as follows:

10 Any insurer failing, without just cause, to file the CGAD as
11 required in this act shall be required, after notice and hearing, to
12 pay a penalty of One Hundred Dollars (\$100.00) for each day the
13 report is untimely, to be recovered by the Insurance Commissioner
14 and the penalty so recovered shall be paid into the General Revenue
15 Fund of this state. The maximum penalty under this section is Ten
16 Thousand Dollars (\$10,000.00). The Commissioner may reduce the
17 penalty if the insurer demonstrates to the Commissioner that the
18 imposition of the penalty would constitute a financial hardship to
19 the insurer.

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1548 of Title 36, unless there
22 is created a duplication in numbering reads as follows:

23 The Insurance Commissioner may promulgate rules to carry out the
24 provisions of this act.

SECTION 9. This act shall become effective November 1, 2019.

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